

# EXHIBIT C

068328  
5/31/16

### **Attachment 6: Resource Action Separation Agreement**

You are being offered payments and benefits as part of a resource action that you otherwise would not have been entitled to receive. You will receive and be entitled to keep these payments and benefits only if you accept and comply with all terms of this Agreement. This Agreement requires you to release IBM and related parties from claims you may have as described below. This Agreement also requires you to arbitrate certain claims on an individual basis which are not released.

By accepting this Agreement and the benefits and payments it provides, you agree that if you choose to pursue certain claims that are not released under this Agreement, then such claims must be submitted to arbitration on an individual basis as provided below and may not be pursued in court.

You should thoroughly review and understand the effect of this Agreement before you sign it.

The Resource Action Summary Plan Description is the only document that describes your eligibility for the payments and benefits you are being offered under this Agreement. Any other written or oral representations, promises, or other agreements of any kind made to you in connection with your decision to accept this Agreement will not be recognized.

#### **1. Definitions of certain words used in this agreement**

For purposes of this Agreement and its attachment, certain words have specific definitions.

- "Agreement" means this Separation Agreement.
- "IBM" means International Business Machines Corporation and all of its subsidiary and affiliated companies and all of their respective former or current directors, officers, employees, agents, and benefits plans (and fiduciaries, insurers or other agents of those plans), and all successors and assigns of these entities or individuals.
- "You" or "your" means you and anyone acting as your representative, successor or heir.
- "Release" means your waiver of claims as specified below.

#### **2. What you release by signing this agreement**

By signing this Agreement you release IBM from ALL claims that you may have against it at the time of signing, whether or not related to your employment with IBM or the termination of your employment (EXCEPT FOR THOSE SPECIFICALLY IDENTIFIED IN SECTION 3), and including, without limitation:

- all claims arising under any federal, state, local or foreign law dealing with or regulating employment, including, but not limited to: (1) laws prohibiting discrimination and/or harassment based on race, national origin, ancestry, color, creed, religion, sex, sexual orientation, gender identity and/or expression, genetic information, pregnancy, marital status, disability, medical condition, veteran status, or any other statutorily protected status, as well as claims in any forum alleging retaliation; (2) family and medical leave; (3) claims arising under the Employee Retirement Income Security Act of 1974 ("ERISA"); and (4) all waivable claims related to wages and hours, including under state or local labor or wage payment laws
- all state and local laws prohibiting discrimination on the basis of age
- claims based on contract, tort, or any other legal theory
- all claims whether or not you know about them at the time you sign this Agreement
- any right to use the IBM Open Door or Panel Review Programs to pursue a claim that you release under this Agreement
- If you have worked or are working in California, you expressly agree to waive the protection of section 1542 of the California Civil Code because you are releasing all claims, whether they are known or unknown; Section 1542 of the California Civil Code states:
  - "A general release does not extend to claims which a creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."
  - In the event that you do not understand the waiver of your rights under section 1542 or its legal effect on you, you should talk to a lawyer.

**3. What you do not release by signing this agreement**

By signing this Agreement, you do not release:

- any claims that arise after the date you sign this Agreement
- any claims that by law cannot be waived by private agreement without judicial or governmental supervision, such as under the federal Fair Labor Standards Act of 1938, provided however such claims are subject to arbitration on an individual basis as described below
- any claims that IBM failed to pay wages that IBM acknowledged were due and owing at the time you sign this Agreement
- your right to file a charge with or participate in any investigation or proceeding conducted by the U.S. Equal Employment Opportunity Commission (EEOC) or other government agency; even though you can file a charge or participate in an investigation or proceeding conducted by the EEOC or other government agency, by signing this Agreement you are waiving your ability to obtain relief of any kind from IBM to the extent permitted by law
- your non-forfeitable rights to accrued benefits (within the meaning of sections 203 and 204 of the Employee Retirement Income Security Act of 1974) under the IBM Personal Pension Plan, the IBM Retirement Plan and the IBM 401(k) Plus Plan
- any right you may have to challenge the validity of this Agreement
- your right to enforce this Agreement and to receive the benefits and payments pursuant to the Resource Action Plan
- any claim under the Federal Age Discrimination in Employment Act of 1967 or the West Virginia Human Rights Act, provided however such claims are subject to arbitration on an individual basis as described below

**4. You can take up to 21 days before signing this agreement**

You can take up to twenty-one (21) days from the date you received this Agreement (even if your employment will end sooner) or until your last date of employment, whichever is longer, to consider this Agreement and the accompanying separation program information. If you sign this Agreement before the expiration of the 21-day period, you acknowledge that you knowingly and voluntarily waived the ability to wait the full 21 days.

**FOR EMPLOYEES WORKING IN MINNESOTA ONLY:** this Agreement is not effective for FIFTEEN DAYS after you sign it. You can revoke this Agreement during that time. To revoke this Agreement, your manager or the Project Office must receive a written notice of revocation from you within that time period. You understand that if you do revoke, you will not be entitled to any payments or benefits under this Agreement or the resource action.

**5. Arbitration and waiver of class claims and jury trial**

You agree that any and all legal claims or disputes between you and IBM under the federal Age Discrimination in Employment Act of 1967 (ADEA) or the West Virginia Human Rights Act, as well as any and all claims or disputes between you and IBM that have not or cannot be released by private agreement as a matter of law (such as under the federal Fair Labor Standards Act of 1938 (FLSA)) (collectively "Covered Claims") will be resolved on an individual basis by private, confidential, final and binding arbitration according to the IBM Arbitration Procedures and Collective Action Waiver (which are attached and incorporated as part of this Agreement) and under the auspices of JAMS, or if there is no JAMS office within 100 miles of your most recent assigned IBM office location, then an arbitration forum provider to be mutually agreed to by the parties. Regardless of the designated arbitration administrator, the arbitration shall be held in accordance with the JAMS Employment Arbitration Rules & Procedures. You understand and agree that you are giving up your right to a court action for Covered Claims, including any right to a trial before a judge or jury in federal or state court. This agreement to arbitrate does not apply to government agency proceedings.

To the maximum extent permitted by applicable law, you agree that no Covered Claims may be initiated, maintained, heard or determined on a class action, collective action or multi-party basis either in court or in arbitration, and that you are not entitled to serve or participate as a class action member or representative or collective action member or representative or receive any recovery from a class or collective action involving any Covered Claims either in court or in arbitration.

You further agree that if you are included within any class action or collective action in court or in arbitration involving a Covered Claim, you will take all steps necessary to opt-out of the action or refrain from opting in, as the case may be. Any issue concerning the validity or enforceability of this Agreement, including the class action or collective action waivers contained in this section, shall be decided only by a court of competent jurisdiction. Any issue concerning the arbitrability of a particular issue or claim pursuant to this section (except for issues concerning the enforceability of the class action or collective action waivers) must be resolved by the arbitrator and not a court.

This arbitration agreement shall not prohibit applications for temporary or preliminary injunctive relief in aid of arbitration or for the maintenance of the status quo pending arbitration. Your agreement to arbitrate certain claims pursuant to this Agreement shall not prohibit you from filing a charge or complaint with and seeking relief from the U.S. Equal Employment Opportunity Commission, the National Labor Relations Board, the U.S. Department of Labor, the Occupational Safety and Health Commission, or any other federal, state or local administrative agency concerning claims that are not released under this Agreement.

This agreement to arbitrate claims shall be governed by and interpreted in accordance with the Federal Arbitration Act ("FAA"). If for any reason the FAA is held inapplicable to this Agreement, then the State of New York's law of arbitrability shall apply.

#### 6. Miscellaneous

If any part of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will not be affected in any way, except that if your release of claims or agreement to arbitrate Covered Claims is held to be unenforceable, then at its option IBM may seek to recover to the maximum extent permitted by law the payments and value of benefits that you received under this Agreement.

Except as otherwise noted, this Agreement will be governed by the substantive laws of New York.

By signing this Agreement, you acknowledge that you fully understand any and all rights you have with respect to the claims you are releasing and your agreement to arbitrate Covered Claims. You agree that the payments and benefits you have or will receive under this Agreement are good and valuable consideration for entering into this Agreement. You acknowledge that you have been provided adequate time to consult with a lawyer or other advisor of your own choosing before entering into this Agreement. You further agree that you are voluntarily signing this Agreement without any threats, coercion or duress, whether economic or otherwise, and that you intend to be bound by the terms of this Agreement.

**YOU ARE ADVISED TO CONSULT WITH A LAWYER BEFORE YOU SIGN THIS AGREEMENT**

Employee Name (print): Michael G. Branson  
 Serial #: Q68328  
 Signature:   
 Date: 5/27/16